

No. 5:08-CR-282-2F

DONALD STANTON SHEALEY,
Defendant.

This matter is before the court on the Motion for Reconsideration [DE-449] of the court's order on the Motion of Resentencing [DE-440] filed May 20, 2011. The Government has not seen fit to file a written opposition to Shealey's instant motion, and the time to do so has passed. This matter therefore is ripe for disposition.

On March 24, 2009, after a multi-week trial, Shealey was found guilty on all eight counts charged in the Superseding Indictment. *See* [DE-286]. On July 14, 2009, Shealey was sentenced to a term of prison for the duration of his natural life. *See* [DE-313]. After sentencing, Shealey appealed his drug convictions for alleged violations of the Speedy Trial Act and of the Fifth and Sixth Amendments as well as sentencing errors. *See* [DE-314]. On April 25, 2011, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of this court. *See* [DE-437]. Shealey subsequently filed his *pro se* Motion for Resentencing [DE-440] on May 20, 2011, essentially claiming that the drug quantities that were attributed to him during his sentencing hearing were inaccurate. On July 1, 2011, the court, upon consideration, denied Shealey's motion. *See* [DE-446]. Shealey has now filed the instant *pro se* Motion for

Reconsideration [DE-449] of the court's decision to deny his *pro se* Motion for Resentencing [DE-440].

At the outset, the court notes that Shealey has already challenged his drug convictions based upon, *inter alia*, purported "sentencing errors" by this court. Specifically, in his direct appeal to the Fourth Circuit, Shealey questioned the reasonableness of his life sentence and essentially argued that twenty years would have been sufficient to punish, deter, or rehabilitate him. The Fourth Circuit affirmed his convictions and stated that the sentence imposed by the district court was "procedurally and substantively reasonable" and noted that Shealey "does not point to any specific flaws in his sentencing." *See* [DE-437]. Through the guise of the *pro se* Motion for Resentencing [DE-440] filed on May 20, 2011, Shealey attempted to point out alleged specific flaws in his sentencing that he failed to bring up in his appeal, namely, arguing that this court erred in the drug weight that was attributed to him for sentencing. The court, nonetheless, entertained such motion as it was a *pro se* filing, and upon consideration, denied Shealey's request. *See* [DE-446].

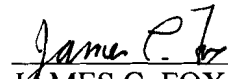
Now, in this current request for reconsideration of the court's denial of his *pro se* Motion for Resentencing [DE-440], Shealey appears to argue, again, that the drug weights attributed to him during his sentencing were inconsistent with what he had been found guilty of at trial. Specifically, Shealey claims "the sentence is unreasonable due to the fact that there was no findings by the court as to the amount that the defendant was accountable the jury's verdict found the amount for the over all [*sic*] conspiracy. yet it did not make individualized findings as to this particular defendant." This contention, in substance, is identical to the argument that was made in his initial request for resentencing, and therefore, the court will not rehash its explanation as why this argument fails. Shealey is advised to carefully review the court's

previous order [DE-446] which, in more than sufficient detail, addressed this contention. Accordingly, Shealey's Motion for Reconsideration [DE-449] is **DENIED**.

Also, in this instant motion, it appears that Shealey is asserting a challenge based on the recent decision rendered by the Fourth Circuit in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011). Pursuant to Standing Order No.11-SO-3 (E.D.N.C. Oct. 18, 2011), the Office of the Federal Public Defender is DIRECTED to review Shealey's case at an appropriate time to determine his status for appointment of counsel¹ and whether he is entitled to relief as a result of the *Simmons* ruling. The Clerk of Court is directed to serve the Office of the Federal Public Defender with a copy of this order.

SO ORDERED.

This the 19th day of December, 2011.



JAMES C. FOX
Senior United States District Judge

¹ Shealey retained counsel throughout the duration of his district court proceedings.